

## NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

### NOTICE OF EMERGENCY RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

[R06-408]

#### PREAMBLE

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| <b><u>1. Sections Affected</u></b><br>R3-2-905 | <b><u>Rulemaking Action</u></b><br>Amend |
|--|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 3-710(F)  
Implementing statute: A.R.S. § 3-716
- 3. The effective date of the rules:**  
October 1, 2006.  
  
This fund will likely be exhausted by January, with +/- 2 weeks margin of error. The current quarter ended September 30. In effect, first full quarter for increased fees will be this fall October through December, which will be due in January.
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**  
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rules:**  
This emergency rulemaking is necessary as an emergency measure to avoid an imminent budget reduction and protect the public health, safety and welfare. If the budget is depleted, the Department will be forced to reduce the number of inspectors which will result in fewer inspections. Without the ability to monitor the quality of eggs that reach the consumer, the public health, safety and welfare will be placed in jeopardy. It is critical to implement the rule change as an emergency rulemaking, as the time lag between emergency implementation and the start of increased revenues is six months or longer, due to the quarterly fee collection schedule.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

While the rule will not diminish a previous grant of authority, without the requested change, the rule will diminish the ability of the Department to implement its authority. As described above, the rule is necessary to protect the general public.

**8. The summary of the economic, small business, and consumer impact:**

A. *The Arizona Department of Agriculture.*

This rulemaking will provide the Department with additional revenue from an increase in the egg inspection fee rate. This rate increase will offset a complete depletion of the funds used to conduct the inspections in the short term until the regular rulemaking process can be completed.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

An Arizona egg dealer, producer-dealer, manufacturer, producer, or retailer will be subject to the increased fee.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**10. Incorporations by reference and their location in the rules:**

None

**11. An explanation of the situation justifying the rule's making as an emergency rule:**

The reason is as stated above in item 6. Because of the normal rulemaking process, which requires adequate public notice and an opportunity for comment, the egg fund (an appropriated non-general fund source) would be exhausted prior to the rule being approved. This would force a reduction in force for program staff.

Although pay increases granted by the legislature were certainly welcomed by employees, they had a substantial negative impact with respect to the egg fund balance, putting it in a rapid state of decline.

It should also be pointed out the agency proposes to raise the mill fee to the same rate assessed to egg dealers in 1989, when the mill fee was voluntarily reduced to 2.33 mills due to a fund balance beyond was what required to operate the egg inspection program.

**12. The date of the Attorney General's approval of the emergency rule:**

October 6, 2006

**13. The full text of the rule follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE  
ANIMAL SERVICES DIVISION**

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

Section

R3-2-905. Inspection Fee Rate

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

**R3-2-905. Inspection Fee Rate**

A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of ~~2.3 mills (.00233)~~ 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).

B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of ~~2.3 mills (.00233)~~ 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).